



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: GE American Communications, Inc.

File: B-233547

Date: February 17, 1989

DIGEST

Protest that specifications limiting the new construction of satellite earth terminals unduly restricts competition is denied where the agency explains the elimination is necessary to meet its minimum needs and the protester fails to show that the restriction is clearly unreasonable. Firms with existing satellite earth terminals do not have an unfair competitive advantage because the alleged advantage is not the result of preference or unfair action by the government.

DECISION

GE American Communications, Inc., challenges as unduly restrictive certain limitations on constructing new satellite earth terminals in request for proposals (RFP) No. DCA200-88-R-0050. The RFP, issued on June 6, 1988, by the Defense Communications Agency, Defense Commercial Communications Office (DECCO), solicits telecommunications service supporting the Air Force Supercomputer Initiative connecting Kirtland Air Force Base (AFB), New Mexico, and seven other bases. The RFP contemplated the possibility of multiple awards and had a closing date for receipt of proposals of November 15, 1988.^{1/}

We deny the protest.

^{1/} As GE American timely filed a protest on November 10 alleging solicitation improprieties, the contracting agency suspended evaluation of proposals to await the decision of our Office.

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GE American's protest concerns the following RFP restrictions on satellite earth terminal construction applicable to contractors providing services via satellite connectivity:^{2/} (1) the contractor may use only an existing contractor-owned on-base terminal or a contractor-provided off-base terminal at Wright-Patterson AFB, Ohio; that is, no additional terminals are authorized to be built on Wright-Patterson AFB; and (2) only one additional terminal is authorized to be constructed in a government provided on-base area on Kirtland AFB; however, offerors can use pre-existing on-base terminals and contractor provided off-base terminals. GE American contends that these restrictions are unduly restrictive of competition and provide an unfair competitive advantage to those prospective offerors that have existing terminals on the bases.

When a protester challenges a specification as being unduly restrictive of competition, the burden initially is on the procuring agency to establish prima facie support for its contention that the restriction is needed to meet its minimum needs. Once the agency establishes this prima facie support, the burden shifts to the protester to show that the requirement complained of is clearly unreasonable. Reach All, Inc., B-229772, Mar. 15, 1988, 88-1 CPD ¶ 267.

According to DECCO, it is the policy at Wright-Patterson AFB not to install additional satellite earth terminals when: (a) an alternate technical solution is feasible; (b) such installation will generate a radio frequency interference problem; or (c) such installation will not meet the aesthetics criteria of the Wright-Patterson AFB Facilities Board. DECCO states that pursuant to this policy no new terminal was authorized for this requirement and advances five reasons for the policy. First, the base's local exchange carrier has already provided fiber optic points of presence which provide connectivity access to various geographical areas throughout the base. Second, continued proliferation and installation of earth terminals at Wright-Patterson AFB, when there is an alternative technical solution available, could easily preempt a future mission essential requirement for an earth terminal where there is no alternative technical solution. Third, aesthetics is a continuing effort at Wright-Patterson AFB. Fourth, there is a continuing concern that adding more electromagnetic generating devices will eventually lead to serious and

^{2/} Contractors could also propose terrestrial connected services, which the RFP states is the "preferred" method, although satellite connected services are "acceptable."

pervasive radio frequency interference problems for the on-going missions at Wright-Patterson AFB. Finally, real estate at Wright-Patterson AFB has been and will continue to be at a premium with all new and continuing projects in competition for space.

DECCO has also justified its decision to permit the construction of only one new terminal on Kirtland AFB. First, DECCO notes that there are significant electrical power problems that make it economically unfeasible to allow more than one terminal to be constructed. These problems include insufficient power at the terminal location and the long distance between the terminal location and the power distribution facilities, which could lead to power disturbances if additional power demands are made. Moreover, Kirtland AFB is said to have the same real estate limitation concerns as does Wright-Patterson AFB.

GE American contends that the agency has failed to establish prima facie support for its contention that the restrictions it imposes are reasonable, and that the agency's report is nonresponsive to the basic complaint that competition is unfairly inhibited by the RFP limitations.

We find that DECCO has established the required prima facie support for the specification limitations and that GE American has failed to demonstrate that the limitations are clearly unreasonable. The agency's concern over the potentially harmful effects of added electromagnetic generating devices and limited real estate on Wright-Patterson AFB are particularly cogent. The real estate and power-related concerns at Kirtland AFB are equally persuasive.

As to the assertion that offerors without existing terminals are placed at a competitive disadvantage, it is well recognized that a firm may enjoy a competitive advantage by virtue of its own particular circumstances, which an agency is not necessarily required to equalize. Here, as noted by the Air Force, offerors could propose terrestrial communication services, where satellite earth terminals are unnecessary; or off-base terminals; or existing on-base terminals. Since the asserted competitive advantage in this case is not connected with any preference or unfair action by the government, the government has no duty to eliminate the alleged competitive advantage. AJK Molded Products, Inc., B-229619, Feb. 1, 1988, 88-1 CPD ¶ 96.

The protester has not attempted to refute the agency's specific justifications for these restrictions, but questions the "equity" of limitations and the asserts that

there could be problems if multiple awards are made. In light of the agency's justifications and the protester's failure to challenge them, we find nothing objectionable in DECCOs' limitations on new construction of satellite earth terminals.

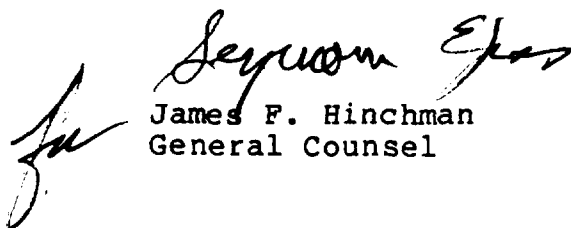
With regard to Kirtland AFB, GE American also protests that the limitation that only one satellite earth terminal be constructed could prevent an otherwise successful offeror from receiving an award for one or more of the individual data trunks involved. The protester explains that this could happen if two offerors, who offer satellite connected services but who do not have existing suitable facilities at Kirtland AFB, propose the lowest prices for two separate line items of telecommunications services. Under such circumstances, each offeror may then have to construct a terminal at Kirtland AFB, for both to be selected for award to assure the government receives the most cost effective service. GE American speculates that if one of these lower cost satellite carriers is eliminated by this restriction, a protest could result. GE American contends that if the restriction on building new satellite terminals is allowed to stand, this problem can only be resolved by amending the RFP to provide for a single award for all line items of telecommunications services.

The Air Force responds that GE American's worst case scenario is hypothetical and speculative and that it has no reason to believe it will occur. In this regard, the Air Force notes that offerors had numerous technical alternatives to satisfy RFP requirements, for example, terrestrial communications, utilizing existing on-site or off-site terminals or constructing an off-site terminal. Moreover, the Air Force did not anticipate that the offerors who proposed constructing a new terminal at Kirtland AFB to provide satellite connected services would also be determined most advantageous for different line items of services. In any case, the Air Force promises that if this situation does arise, it can equitably resolve the matter during discussions prior to the submission of best and final offers.

On balance, although contingencies such as that pointed out by GE American should ordinarily be resolved to the maximum extent possible in the solicitation, we will not, in the circumstances present here, object to the Air Force's postponing its resolution of this potential problem until it actually arises. In this regard, the Air Force has reasonably justified its limitation on constructing new terminals at Kirtland AFB and has persuasively shown that GE American's worst case scenario is not likely to occur.

Moreover, GE American's proposed solution of amending the RFP to provide for a single award could well result in an award not most advantageous to the government, if multiple awards would result in a lower cost to the government.

The protest is denied.

James F. Hinchman
General Counsel